

June 15, 2009

TO: Teresa Parsons, Supervisor  
Director's Review Program

FROM: Meredith Huff, SPHR  
Director's Review Investigator

RE: Yun Chu (Christina) Kim v Liquor Control Board (LCB)  
Allocation Review ALLO 08-079

**Director's Review Conference**

Ms. Yun Chu (Christina) Kim and Ms. Rayette Luras individually requested a Director's Review through their representative, Ms. Tess Millar, WPEA. On April 30, 2009, the review conference was held at the Department of Personnel, 2828 Capitol Blvd. in Olympia, WA. In attendance were Ms. Kim and Ms. Luras, employees; Ms. Millar, WPEA Employee Relations Specialist representing Ms. Kim and Ms. Luras; and Ms. Melanie Schwent and Ms. Frances Perry, Human Resource Consultants representing LCB.

The Director's Review conference included both employees. Although the employees handle liquor license applications from different organizations, generally the employees' comments were applicable to both of the positions.

**Director's Determination**

As the Director's review investigator, I carefully reviewed all of the documentation in the file, the class specifications and the information provided during the Director's Review conference. After considering all of the information, I conclude that Ms. Kim's position is properly allocated to the Licensing Specialist 2 class.

Concern was expressed by Ms. Perry and Ms. Millar about the compensation for the Licensing Specialist classes and the current indexing of the classes to the Secretary Senior class. As compensation issues are outside of the scope of an allocation review, those concerns were not considered in this review.

## **Background**

Ms. Yun Chu (Christina) Kim, position # 0619, and Ms. Rayette Luras, position #0039, work in the Licensing Department of the LCB. Ms. Kim and Ms. Luras each submitted Position Review Requests (PRR) for reallocation from Licensing Specialist 2 to Investigator 2 classes. By letter dated August 11, 2008, Ms. Schwent informed Ms. Luras that her position was correctly allocated to Licensing Specialist 2 and her request for allocation to Investigator 2 was denied. By letter dated September 29, 2008, Ms. Schwent informed Ms. Kim that her position was correctly allocated to Licensing Specialist 2 and her request for allocation to Investigator 2 was denied.

On August 10, 2008, Ms. Millar submitted a request for a Director's Review of LCB's decision on behalf of Ms. Luras. (Exhibit A-1) On October 29, 2008, Ms. Millar submitted a request for a Director's Review of LCB's decision on behalf of Ms. Kim. (Exhibit A-1)

## **Summary of employees' comments**

Ms. Kim indicated that she reviews and approves or recommends denial of liquor license applications from corporations, limited partnerships organizations, partnerships, restaurants, grocery or retail outlets, wine and beer specialty stores, sports events and entertainment, hotels, etc.

Ms. Luras indicated that she reviews and approves or recommends denial of license applications from manufacturers such as wineries, breweries, and distillers. She also reviews licensing of these organizations for selling retail alcohol; an example is a winery with a tasting room. She described these as non-retail manufacturers with retail privileges.

The manager assigns each application case. Ms. Kim stated she and Ms. Luras initiate background checks and credit checks and do research to establish whether or not there was a previous license or if another/different license is needed due to a change in a partnership or corporation. An initial phone interview with the applicant helps to determine what documents will be required. A letter is sent telling the applicant the process and requesting the required standard documents. Ms. Luras and Ms. Kim confirmed that additional documents and information may be required and requested after the initial documents and application information are reviewed. Ms. Luras indicated that often bank statements and financial information are obtained by a phone interview with the applicant's bank(s). Ms. Kim and Ms. Luras each verified that she independently uses her judgment in determining the possibilities of fraud, questionable wire transfers, funds from overseas, or bank transfers and what related additional information to obtain for review. Ms. Kim confirmed that it is also necessary to look for and at real property ownership, leases in the name of the organization, and possible hidden ownerships. She indicated it is frequently necessary to work with an attorney to obtain the information. Ms. Kim indicated that they contact other agencies and organizations to find necessary information. For example, they often work closely with federal agents if federal licenses have been issued to an applicant, with the Gambling Commission when dealing with casinos, the Lottery Commission, and applicants' attorneys and real estate brokers.

Ms. Millar noted that the work that Ms. Kim and Ms. Luras accomplish is similar to that described in the Investigator 2 class; it is just directed toward a different group. She noted

that the complexity and detail that these employees deal with are not addressed in the Licensing Specialist 2 class; she emphasized that the pay range does not reflect the level of work they are performing. Ms. Millar was in agreement that the benchmark for Licensing Specialist was not correct and expressed openness to seeking approval of a benchmark change.

### **Summary of LCB's comments**

Ms. Perry indicated that the agency was in agreement that the positions are in need of an upgrade and salary review. However, Ms. Perry noted there are challenges and obstacles with the classes. Ms. Perry and Ms. Schwent indicated that LCB is working with DOP to make changes to the Licensing Specialist classes – particularly dealing with compensation. Currently the classes are indexed to Secretary Senior and LCB would like to see an indexing change. Ms. Perry acknowledged that Ms. Kim and Ms. Luras train Licensing Specialist 1 employees who are in-training for one year.

Ms. Schwent found that the employees do a lot of analysis of regulations, applicants' records and background and applicable RCW and WACs. Their positions are different than an Investigator as they are less confrontational in nature and the purpose is not to investigate and resolve complex civil or criminal cases. Rather Ms. Kim and Ms. Luras are reviewing background information of applicants for the purpose of issuing licenses for making and/or selling liquor products. Ms. Schwent found that the Licensing Specialist 2 is the best fit for Ms. Kim's and Ms. Luras' positions.

### **Rationale for determination**

A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which the work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. See Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

The Personnel Resources Board (PRB) has held that: "...because a current and accurate description of a position's duties and responsibilities is documented in an approved classification questionnaire, the classification questionnaire becomes the basis for allocation of a position. An allocation determination must be based on the overall duties and responsibilities as documented in the classification questionnaire." Lawrence v. Dept of Social and Health Services, PAB No. ALLO-99-0027 (2000).

In Salsberry v. Washington State Parks and Recreation Commission, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of *best fit*. The Board referenced Allegri v. Washington State University, [PAB Case No. ALLO-96-0026 (1998)], in which the Personnel Appeals Board noted that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties and responsibilities of his position.

The PRB found that most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

The Board has determined that "salary inequity is not an allocation criterion and should not be considered when determining the appropriate allocation of a position." See Sorensen v Dept. of Social and Health Services and Dept of Personnel, PAB Case No. A94-020 (1995).

#### Position Review Request (PRR)

The assigned responsibilities and duties of Ms. Kim's position are described on the PRR, in part, as follows: "**Position Purpose.** As an investigator, independently examines applications and other documentation for liquor license, and/or functions as a lead worker. To issue liquor licenses, approve corporate and limited changes, and approve and issue temporary licenses. To interview applicants for the purpose of determining eligibility and specific documentation necessary to meet the requirements of the laws in Title 66 of the RCWs.

#### **Main Job Duties:**

**90%.** Independently and impartially manage an assigned caseload of investigations of varying difficulty from routine to complex for liquor licenses; document and summarize investigation findings in an investigative report for approval, denial or commitment.

Review, evaluate and process all new licenses, renewals, and changes in liquor licenses, interim licenses, temporary licenses, miscellaneous transactions submitted for individuals, complex multi-level corporations, general and limited partnerships, limited liability companies, corporations, sole proprietors, charitable and non-profit organizations.

Conduct interviews to determine eligibility; analyze written and oral information; obtain and review necessary data and documentation such as financial statements, loan documents, bank statements, investment statements, leases, purchase and sale agreements, closing documents, conversions, merger documents, real and business property purchases and assumptions....

Detect and investigate discrepancies and clarify application information through inquiries and correspondence; determine the level of investigation needed and conduct more extensive investigations as necessary.

Examine by-laws to determine membership and membership requirements, organizational structure and purposes; separate and evaluate financial records, meeting minutes, and organizational activities for compliance with statutory and other requirements....

Determine the need for applicant background and credit checks, initiating terminal access to provide a detailed examination for financial, criminal and license clearance; interpret legal and personal documents for approval. Participate in the application of Public Disclosure Policies and Procedures.

Work closely with outside sources such as Enforcement Division of the LCB, local enforcement authorities, Gambling commission, attorneys, accountants and real estate

brokers....Assist the general public, Liquor Enforcement, other state agencies, the Attorney general's office, local government agencies ...with any questions/problems.

**10%** Miscellaneous duties such as identifying and correcting errors found in the computer database and license files ... helping with problems, and referring to optional services and other agencies as necessary; ....."

Ms. Cheryl Foster, immediate supervisor, and Brian Thomas, Unit Head, signed Ms. Kim's PRR.

#### Classifications Reviewed

Investigator 1 (class code 427P) and Investigator 2 (class code 427Q)

The **Class Series Concept** for the Investigator series states: *"Positions in this series **conduct civil and/or criminal investigations** in a variety of areas including allegations of fraud or collusion among recipients of public assistance or industrial insurance, allegations of fraudulent and/or unfair business and insurance practices, misconduct, and allegations of civil rights violations. Positions gather facts and develop evidence with responsibility for developing the complete case from the original claim or allegation through preparation for presentation in court or administrative hearing. This includes researching records and case files; gathering and preserving documentary evidence; obtaining statements of fact, depositions, or confessions; obtaining and serving subpoenas to compel the attendance of witnesses or the production of records; conducting field surveillance; obtaining and coordinating the service of search warrants; writing investigative reports, establishing proof of facts and evidence; reviewing the case with private attorneys, assistant attorneys general, or prosecuting attorneys; and testifying in court or other proceedings as necessary."* (emphasis added)

Ms. Kim suggested that the Investigator 2 would be a better choice of allocation for her position. However, Ms. Kim's position does not have responsibility to conduct civil and criminal investigations. She does not do investigations among recipients of public assistance or industrial insurance. She does not do investigations in a variety of areas; rather her investigations are all related to applications for liquor licenses. Although Ms. Kim is prepared to make presentations to the Liquor Control Board regarding liquor licenses, that preparation does not reach the anticipated level of *"...responsibility for developing the complete case from the original claim or allegation through preparation for presentation in court or administrative hearing..."* Ms. Kim's position's assigned responsibilities and duties do not meet the Class Series Concept of the Investigator series. Therefore, the Investigator 2 class is not a match for Ms. Kim's position's overall responsibilities and duties.

#### Other Classifications Reviewed

While I realize that some of Ms. Kim's assigned investigative duties are also encompassed to some extent within other licensing and investigative classifications, they do not fit the configuration of Ms. Kim's position's assigned work or are specific to an employing agency. During the review I found that the Licensing Specialist 2 classification is a better fit for Ms. Kim's position's overall responsibilities than the agency specific investigative classes of Investigator 2 (class code 427Q), Correctional Investigator (class code 427E), Violent

Crimes Criminal Information Analyst (class code 427V), or Licensing Services Representative 2 (class code 458F).

Licensing Specialist 2 (class code 458M)

The **Definition** states: *“Independently examines applications and other documentation for liquor or gambling licenses or functions as a lead worker. Issues a variety of gambling licenses and Class III Gaming certifications or approves issuance of certain liquor licenses, corporate and limited changes, interim licenses, and 60-day temporary licenses.”*

The **Distinguishing Characteristics** states: *“Incumbents in this class are fully qualified to examine and verify applications and other documentation for legality and compliance.”*

While not allocating criteria, the **Typical Work** provides further description of the work typically performed by incumbents allocated to the Licensing Specialist 2 classification. In summary, a Licensing Specialist 2 incumbent typically performs the breadth of work necessary, in part, to:

- Independently manages an assigned caseload of routine to complex investigations for liquor licenses; documents and summarizes investigation findings in a report for approval, denial, or commitment;
- Reviews, evaluates, and processes all new, renewal, and changes in liquor or gambling licenses/Class III certifications, interim licenses, 60-day temporary licenses, miscellaneous transactions submitted for individuals, multi-level corporations, general and limited partnerships, limited liability companies, corporations, sole proprietors, charitable and non-profit organizations;
- Conducts interviews to determine eligibility; analyzes written and oral information; obtains and reviews necessary data and documentation such as financial statements, loan documents, bank statements, investment statements, leases, purchase and sale agreements, closing documents, and numerous legal documents;

As noted on the PRR and confirmed during the review conference, Ms. Kim independently reviews, evaluates and processes permits, licenses, renewals and changes in liquor licenses. She determines the need for and initiates applicant background and credit checks. She independently conducts interviews to determine eligibility, analyzes written and oral information, obtains and reviews a variety of necessary and supplemental documentation including, but not limited to, financial statements, credit reports, loan documents, bank statements, real and business property purchases and assumptions, merger documents, stock purchases and investment statements. As necessary Ms. Kim conducts more extensive investigations when she detects any discrepancies or clarifies application information. These duties and responsibilities are encompassed by the Definition and Distinguishing Characteristics and supported by the Typical Work of the Licensing Specialist 2.

Ms. Kim performs a variety of work in evaluating liquor license applications for approval or denial which is consistent with the level of work anticipated by the Licensing Specialist 2 class. The overall responsibilities and duties assigned to Ms. Kim's position best fits within the Licensing Specialist 2 classification. Ms. Kim's position is properly allocated.

### **Appeal Rights**

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following: *"An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board . . . . Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken."*

### **Please note telephone and address changes:**

June 26 through July 3, 2009, the offices of the Director's Review Program and Personnel Resources Board Appeals Program will be moving to the Department of Personnel building located at 600 South Franklin in Olympia. Starting June 26, 2009, the main phone number for the two programs will be **360-664-0388**. The fax number remains the same - **360-753-0139**.

All requests for Director's Reviews and appeals to the Personnel Resources Board must be filed:

**In person at:**

600 South Franklin  
Olympia, WA 98504-7530

**OR**

**By mail at: (unchanged)**

Mail Stop 40911  
Olympia, WA 98504-0911

If no further action is taken, the Director's determination becomes final.

cc: Tess Millar, WPEA  
Melanie Schwent and Frances Perry, LCB  
Lisa Skriletz, DOP

Enclosure: Exhibit List

Exhibit List

**A. Christina Kim Exhibits**

1. WPEA Letter of Appeal for Christina Kim October 30, 2008
2. LCB Allocation Determination Letter dated September 29, 2008
3. Position Review Request 9/22/2008

**B. Liquor Control Board Exhibits (LCB)**

1. Position Review Request submitted to LCB HR September 22, 2008
2. Allocation determination letter dated September 29, 2008
3. Classification Questionnaire dated and signed
4. Organizational Chart (Licensing and Regulation Division)
5. Class Specifications
  - a. Licensing Specialist 1 (458K)
  - b. Licensing Specialist 2 (458M)
  - c. Licensing Specialist 3 (458O)
  - d. Investigator 1 (427P)
  - e. Investigator 2 (427Q)
  - f. Investigator 3 (427R)
  - g. Investigator 4 (427S)
6. Classification Comparison

**C. Classifications reviewed by Director's Investigator**

- a. Correctional Investigator (427E)
- b. Licensing Services Representative 2 (458F)
- c. Violent Crimes Criminal Information Analyst (427V)